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Supreme Court of the United States

October Term, 1977

No. 77-1274

ALUMINUM COMPANY OF AMERICA
and JONES & LAUGHLIN STEEL CORPORATION,
Petitioners,

v.

CUYAHOGA COUNTY BOARD OF REVISION
and CLEVELAND BOARD OF EDUCATION,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of Ohio

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TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION 2

QUESTIONS PRESENTED 3

CONSTITUTIONAL PROVISIONS AND STATUTES 3

STATEMENT 4

1. The Statutes 4

2. The Proceedings Below 5

ARGUMENT 8

1. Fundamental Rights Of The Petitioners Have Been Denied 8

THIS CASE PRESENTS A MATTER OF GREAT GENERAL INTEREST AND IMPORTANCE 11

CONCLUSION 12

APPENDIX:

A. United States Constitution, Amendment XIV, Article 1 ..... A1

B. Ohio Revised Code, Section 5715.10 ..... A2

C. Ohio Revised Code, Section 5715.11 ..... A3

D. Ohio Revised Code, Section 5715.13 ..... A4

E. Ohio Revised Code, Section 5715.19 ..... A5

F. Ohio Revised Code, Section 5715.30 ..... A7

G. Journal Entry of the Court of Common Pleas in Aluminum Company of America v. Board of Revision of Cuyahoga County (December 17, 1975) A8

H. Journal Entry of the Court of Common Pleas in Jones & Laughlin Steel Corp. v. Board of Revision of Cuyahoga County, *et al.* (December 16, 1975) A10

I. Memorandum of Opinion of the Court of Common Pleas in Sunshine Realty, Inc., *et al.* v. Cuyahoga County Board of Revision, *et al.* (November 14, 1975) A12

J. Journal Entry and Opinion of the Court of Appeals in Aluminum Company of America and Jones & Laughlin Steel Corporation v. Cuyahoga County Board of Revision, *et al.* (August 25, 1977) A31

K. Journal Entry and Opinion of the Court of Appeals in Sunshine Realty, Inc., *et al.* v. Cuyahoga County Board of Revision, *et al.* (August 25, 1977) A37

L. Journal Entry of the Supreme Court of Ohio (December 15, 1977) A54

TABLE OF AUTHORITIES

Cases

Barr v. Columbia (1964), 378 U.S. 146 9

Bonnie v. Columbia (1964), 378 U.S. 347 9

Griffith v. Board of Revision (1975), 44 Ohio St. 2d 225 ..... 8, 9

Stanjim Co. v. Board of Revision (1974) 38 Ohio St. 2d 233 ..... 6, 8, 9, 10

Wright v. Georgia (1963), 373 U.S. 284 9

Yick Wo v. Hopkins (1886), 118 U.S. 356 10

Statutes

Ohio Revised Code Section 5715.10 3

Ohio Revised Code Section 5715.11 3

Ohio Revised Code Section 5715.13 ..... 3, 4, 5, 6, 9

Ohio Revised Code Section 5715.19 ..... 4, 6

Ohio Revised Code Section 5715.30 ..... 4, 5

Constitution

U.S. Constitution, Amendment XIV, Article 1 3

Supreme Court of the United States

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No._____

ALUMINUM COMPANY OF AMERICA
and JONES & LAUGHLIN STEEL CORPORATION,
Petitioners,

v.

CUYAHOGA COUNTY BOARD OF REVISION
and CLEVELAND BOARD OF EDUCATION,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of Ohio

The Aluminum Company of America ("Alcoa") and the Jones & Laughlin Steel Corporation ("J&L") petition for a writ of certiorari to review the final decree of the Supreme Court of Ohio in this case.

OPINIONS BELOW

None of the opinions of the courts below have been reported. They are appended hereto and referenced as follows:

Journal Entry in *Aluminum Company of America v. Board of Revision of Cuyahoga County et al.*, Court of Common Pleas, Cuyahoga County, Case No. 75-937942, filed December 17, 1975 (App. G, *infra*, pp. A8-A9).

Journal Entry in *Jones & Laughlin Steel Corporation v. Board of Revision of Cuyahoga County, et al.*, Court of

Common Pleas, Cuyahoga County, Case No. 934250, dated December 16, 1975 (App. H, *infra*, pp. A10-A11).

Opinion of Judge McMonagle in the companion cases consolidated under the style of *Sunshine Realty Inc. v. Cuyahoga County Board of Revision et al.*, Court of Common Pleas, Cuyahoga County, Nos. 934,646 *et al.*[1], dated November 14, 1975 (App. I, *infra*, pp. A12-A30).

Opinion of the Court of Appeals of Ohio, Eighth District, *Aluminum Company of America and Jones & Laughlin Steel Corporation v. Cuyahoga County Board of Revision et al.*, Nos. 35779, 35801, 35802 and 35816, dated August 25, 1977 (App. J, *infra*, pp. A31-A36).

Opinion of the Court of Appeals of Ohio, Eighth District, in the consolidated cases of *Sunshine Realty Inc. et al. v. Cuyahoga County Board of Revision et al.*, Nos. 934,-646 *et al.*[2], dated August 25, 1977 (App. K, *infra*, pp. A37-A53).

JURISDICTION

The final decree of the Supreme Court of Ohio was entered on December 15, 1977 and the jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

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[1] 25 cases were consolidated in this decision which included Case No. 935,156, *Community for Better Living v. Cuyahoga County Board of Revision*, referred to in the Journal Entries of the Common Pleas Court referred to above.

[2] 232 companion cases were consolidated in this appeal which included the 25 cases consolidated under this style in the Court of Common Pleas.

QUESTIONS PRESENTED

Whether dismissals of taxpayers' complaints by the Board of Revision for failure to include all pertinent information in the complaint forms violated the due process clause of the Fourteenth Amendment to the Constitution of the United States, where —

(1) Such information was supplied to the Board of Revision in writing, but not under oath prior to the hearing;

(2) Such information was put in evidence at the hearing before the Board of Revision; and

(3) It was the announced practice of the Board of Revision not to require such information to be supplied in the complaint forms.

Whether dismissals of taxpayers complaints by the Board of Revision for failure to include all pertinent information in the complaint forms, while granting relief to other taxpayers whose complaints did not contain such information, violated the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES

The constitutional provisions and Ohio statutes involved and their appendix references are as follows:

United States Constitution, Amendment XIV, Article 1, App. A, *infra*, p. A1.

Ohio Revised Code, Section 5715.10, App. B, *infra*, p. A2.

Ohio Revised Code, Section 5715.11, App. C, *infra*, p. A3.

Ohio Revised Code, Section 5715.13, App. D, *infra*, p. A4.

The pertinent parts of Ohio Revised Code, Section 5715.19, App. E, *infra*, pp. A5-A6.

Ohio Revised Code, Section 5715.30, App. F, *infra*, p. A7.

STATEMENT

1. The Statutes

Ohio Revised Code Section 5715.19 established the procedure whereby Ohio taxpayers may file complaints as to the valuation or assessment of their real property on or before the time limited for payment of such taxes. Its only provision respecting the contents of the complaint is: "* * * Each complaint shall state the amount of overvaluation, undervaluation, discriminatory valuation, or illegal valuation complained of * * *".

The official complaint form prescribed by the Ohio Board of Tax Appeals ("BTA") was captioned "COMPLAINT AS TO THE ASSESSMENT OF REAL PROPERTY" with the written notation under it "(Revised Code Section 5715.19)".[3] This form, in addition to providing spaces for the amount of valuation complained of, also contained a section headed: "The Following Pertinent Information Should be Submitted In Support Of This Application." The spaces provided thereunder were for information respecting the purchase of the property, mortgage and insurance data, building descriptions and costs, book value and sales of similar property cited for comparison.

The Cuyahoga County Board of Revision ("Board") had a long standing announced policy of not requiring tax-

[3] The forms supplied by the Auditor of Cuyahoga County omitted the notation in parenthesis. The new complaint form adopted by the BTA on December 14, 1974 contains a notation under the caption "(R.C. 5715.13 and 5715.19)."

payers to fill in the pertinent information section of complaints and had held hearings and rendered decisions on such complaints for a number of years. This policy was based on a written opinion of the Cuyahoga County Prosecuting Attorney rendered on June 7, 1971.

Ohio Revised Code Section 5715.13 provides:

> "The county board of revision shall not decrease any valuation complained of unless the party affected thereby or his agent makes and files with the board a written application therefor, verified by oath, *showing the facts upon which it is claimed such decrease shall be made.*" (Emphasis supplied)

No time limit is specified as to when such an application must be filed, nor did the BTA prescribe any time limit or form for such an "application", although it was required to provide forms under Ohio Revised Code Section 5715.30. The BTA, subsequent to the events herein, prescribed new forms[4] which permit such facts to be filed within 45 days after the deadline for filing complaints.

2. The Proceedings Below

Alcoa and J&L each timely filed complaints respecting the tax assessments on their Cleveland Works with the Board for the tax years 1972 and 1973 on the BTA forms provided by the Auditor of Cuyahoga County. Although the "pertinent information" section of these forms was not completed, each of the petitioners set forth the amount of overvaluation claimed. In addition, both petitioners

[4] On December 15, 1974 the BTA adopted a new complaint form (Form 1) which does not require any of the former "pertinent information" to be set forth and also adopted an entirely new Form 1A captioned "SUPPLEMENTAL INFORMATION FOR DECREASE OR INCREASE IN VALUATION." Form 1A only requires a portion of the information formerly requested by the complaint form involved in this case and is not due until 45 days after the last day for payment of taxes.

filed detailed written appraisals with the Board prior to their hearings, setting forth in detail all the facts upon which they claimed decreases should be made. Thereafter, lengthy hearings were held by the Board in each case. The appraisals and other documents were received in evidence; all the facts the Board deemed pertinent were testified to under oath by expert appraisers and the Board toured each of the facilities in question.

On June 12, 1974, the Supreme Court of Ohio decided the case of *Stanjim Co. v. Board of Revision*, 38 Ohio St. 2d 233. This was about a month after the hearings in the Alcoa case were completed and six days before the Board toured the Alcoa facilities. However, further hearings in the J&L case proceeded before the Board on August 21-23, 1974. By means of a letter dated September 11, 1974, the Board notified J&L of the dismissal of its complaints because they lacked the "required information" and for failure to comply with Ohio Revised Code Sections 5715.13 and 5715.19 (App. D and E, *infra*, pp. A4 and A5-A6). A similar letter was sent to Alcoa on December 19, 1974.

Both Alcoa and J&L timely filed notices of appeal from the decision of the Board with the Cuyahoga County Court of Common Pleas wherein they each contended that the decision and order of the Board was "unreasonable, arbitrary, discriminatory, contrary to law and denies Appellant due process and equal protection of the laws under the Constitution of the State of Ohio and the United States of America."

The Court of Common Pleas reversed the Board in each of these cases and remanded them for further proceedings (App. G and H, *infra*, pp. A8-A9 and A10-A11). No opinions were rendered in either of these cases by the Court of Common Pleas. However, the journal entries make it clear that the decisions are based on the stipula-

tions of fact and the opinion rendered by Judge McMonagle in the case of *Community for Better Living, Inc. v. Board of Revision*, Common Pleas Case No. 935,156, which is one of the 25 cases consolidated for hearing in the Common Pleas Court with the lead case of *Sunshine Realty, Inc. v. Cuyahoga County Board of Revision et al.*, (App. I, *infra*, pp. A12-A30).[5] Judge McMonagle's opinion held that the "appellants", which includes the petitioners herein, were denied due process of the law and "were not afforded the equal protection of the law". (App. I, *infra*, pp. A18, A22).

The Alcoa and J&L cases and the Sunshine Realty cases were appealed by the Board[6] to the Court of Appeals of Ohio, Eighth District, and the Alcoa and J&L cases were consolidated for hearing. That court reversed the decisions of the Court of Common Pleas in the Alcoa and J&L cases and also in the Sunshine Realty cases (App. J and K, *infra*, pp. A31-A36 and A37-A53). Although Alcoa and J&L raised the due process and equal protection of the laws questions in their briefs, the Court of Appeals found no such violations. Appeals in the Alcoa and J&L cases and in the Sunshine Realty cases were thereafter taken to the Ohio Supreme Court, based on the claimed denial of these same constitutional rights, both state and federal, with identical results—they were dismissed on the ground that no substantial constitutional question existed (App. L, *infra*, p. A54).

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[5] These cases are hereinafter referred to for convenience as the "Sunshine Realty" cases. They involved substantially the same legal issues, except that Alcoa and J&L have raised additional issues not present in the Sunshine Realty cases.

[6] In the Alcoa and J&L cases, the Cleveland Board of Education was also a party and participated in the appeal.

ARGUMENT

1. Fundamental Rights of the Petitioners Have Been Denied.

The summary dismissal of the petitioners' complaints after hearings were held and sworn testimony received in evidence covering all the facts petitioners relied on to support their claims for decreases in the assessed values of their property, constituted a denial of due process of law. In these cases, none of the facts Alcoa and J&L relied upon (except comparative sales) were even called for in the complaint form. The comparative sales and all other facts they relied upon for decreases were supplied in their appraisals which were submitted prior to the hearings and testified to at length at the hearings. After receiving all of this evidence, it was arbitrary and unreasonable to dismiss the complaints, merely because all the data called for therein had not been supplied at the time the complaints were filed.

The Ohio Supreme Court's decision in *Stanjim Co. v. Board of Revision* (1974), 38 Ohio St. 2d 233, is not applicable to a case such as this. There was no hearing in that case and the pertinent facts had not been supplied. The basis of the decision was that the facts should be supplied to give the Board an opportunity to investigate them. In these cases, the Board was afforded ample opportunity to investigate the facts, including viewing the premises. In fact, it appears that the Supreme Court of Ohio may have sanctioned the procedure herein followed by way of dictum in *Griffith v. Board of Revision* (1975), 44 Ohio St. 2d 225. In *Griffith* the taxpayers had not filled in the "pertinent information" section of the complaint form but had inserted a reference to appraisals of their respective properties which had previously been filed with the Board in connection with a related case. Despite the fact

the appellants in *Griffith* did not precisely raise a question concerning the prior appraisals having been submitted to the Board for years immediately prior to the tax year in question, the Court reviewed such appraisals to ascertain whether they did contain all of the pertinent facts, but concluded that they did not. In both *Stanjim* and *Griffith* no hearings were held as in the instant situation.

These cases involved large industrial complexes that consisted of numerous buildings constructed over a period of many years. It is unrealistic to require the petitioners here to assemble all the "pertinent information" called for in the complaint form within the short time available. Judge McMonagle found this requirement to be so unrealistic and restrictive as to deprive taxpayers of their constitutional rights. In his opinion in the Sunshine Realty cases he stated:

> "Such requirements being so unconscionably restrictive as to deprive taxpayers of their constitutional right of review of the action of a public official and so as to deprive taxpayers of both Federal and State constitutional due process rights." (App. I, p. A18).

Moreover, the Board's action was taken summarily, without warning and was a complete reversal of its long established procedure of not requiring the "pertinent information" section of the complaint to be completed. This violated the doctrine of "fair warning" which is inherent in the concept of due process of law. *Bonnie v. Columbia* (1964), 378 U.S. 347; *Barr. v. Columbia* (1964), 378 U.S. 146; *Wright v. Georgia* (1963), 373 U.S. 284, 291.

Ohio Revised Code 5715.13 only requires setting forth in the "application" for decrease "* * * the facts upon which it is *claimed* such decrease should be made." (Emphasis supplied) The petitioners could not reasonably foresee that the Ohio Supreme Court would interpret this to encompass the "pertinent information" in the complaint

where such information was not relied upon by the petitioners and in view of the long established practice of the Board of not requiring such information. The Ohio Supreme Court's interpretation of the statute in *Stanjim* was both startling and unforeseeable.

The dismissal of these complaints was predicated on petitioners' failure to supply therein evidentiary matters, the pertinent ones of which were supplied both in the appraisals prior to the hearings and at the time of the hearings. The dismissal of these complaints for that reason is tantamount to holding that complaints may never be amended, even with respect to evidentiary matters. The Court of Common Pleas found that this failure to afford an opportunity to amend, correct or supplement a complaint constituted a failure to afford the complainant due process (App. I, *infra*, p. A27).

The *Stanjim* case was decided June 12, 1974 and the stipulations filed in these cases reveal that both prior to and subsequent to that date the Board heard and decided many complaints seeking decreases, in which the "pertinent information" section was not completed. The dismissal of these complaints while deciding many similar ones constituted an arbitrary deprivation of the petitioners' constitutional rights to equal protection of the laws. In these cases, as in the case of *Yick Wo v. Hopkins* (1886), 118 U.S. 356, it is the discriminatory application of the law which constitutes the denial of equal protection.

In addition to finding that the dismissal of the complaints in these cases by the Board violated the petitioners constitutional rights of due process and equal protection of the law (App. I, *infra*, p. A29). Judge McMonagle further stated:

> "The summary dismissal of the subject Complaints obviously resulted in an unusually severe hardship on many taxpayers. The action of the B. R. unless reversed will constitute a grossly shocking misapplication of justice." (App. I, *infra*, pp. A14)

THIS CASE PRESENTS A MATTER OF GREAT GENERAL INTEREST AND IMPORTANCE

During 1974, the Board dismissed approximately 1400 complaints for failure to complete the "pertinent information" section of the complaint form. At the same time the Court of Appeals of Ohio, Eighth District, entered its judgment in this proceeding, it upheld the Board's dismissal of 232 other complaints by taxpayers who had not completed the pertinent information section of their complaint forms. *Sunshine Realty et al. v. Cuyahoga County Board of Revision, et al.* The appeals to the Ohio Supreme Court in these cases were likewise dismissed but they have an additional month in which to file a petition for writ of certiorari in this Court.

Each of these cases involve fundamental legal and constitutional rights of taxpayers that were recognized by the decision of the Common Pleas Court of Cuyahoga County which reversed the Board's dismissal of the complaints and remanded them to the Board for further proceedings. The instant proceedings are distinguishable from *Stanjim* and should be reviewed by this Court. In the event the petitioners in the Sunshine Realty cases file a petition for a writ of certiorari in this Court, as appears likely, the instant cases should be consolidated with them for argument.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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March, 1978

APPENDIX A

UNITED STATES CONSTITUTION, AMENDMENT XIV, ARTICLE 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX B

OHIO REVISED CODE, SECTION 5715.10

The county board of revision shall be governed by the laws concerning the valuation of real property and shall make no change of any valuation except in accordance with such laws.

The board may call persons before it and examine them under oath as to their own or another's real property to be placed on the tax list and duplicate for taxation, or the value thereof. If a person notified to appear before the board refuses or neglects to appear at the time required, or appearing, refuses to be sworn or answer any question put to him by the board or by its order, the chairman of the board shall make a complaint thereof in writing to the probate judge of the county, who shall proceed against such person in the same manner as provided in section 5711.37 of the Revised Code.

APPENDIX C

OHIO REVISED CODE, SECTION 5715.11

The county board of revision shall hear complaints relating to the valuation or assessment of real property as the same appears upon the tax duplicate of the then current year. The board shall investigate all such complaints and may increase or decrease any such valuation or correct any assessment complained of, or it may order a reassessment by the original assessing officer.

APPENDIX D

OHIO REVISED CODE, SECTION 5715.13

The county board of revision shall not decrease any valuation complained of unless the party affected thereby or his agent makes and files with the board a written application therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made.

APPENDIX E

OHIO REVISED CODE, SECTION 5715.19

A complaint against any valuation or assessment which appears upon the tax duplicate of the then current year shall be filed on or before the twentieth day of December, or on or before the time limited for payment of taxes for the first half year, extended under section 323.17 of the Revised Code. Any taxpayer may file such a complaint as to the valuation or assessment of his own or another's real property, and the board of county commissioners, the prosecuting attorney, or the treasurer of any county, any board of township trustees, any board of education, or the mayor or legislative authority of any municipal corporation in any county may file such a complaint. The county auditor shall present to the county board of revision all complaints filed with him, and each board shall notify any such complainant and also the property owner, if his address is known, when the complaint is filed by one other than the property owner, by registered or certified mail, not less than ten days prior to the hearing, of the time and place the same will be heard, and shall hear and render its decision on such complaint within ninety days after the filing thereof with the said board.

The determination of any such complaint shall relate back to the date when the lien for taxes for the current year attached or the date as of which liability for such year was determined, and liability for taxes for such year and each succeeding year until the complaint is finally determined and for any penalty for nonpayment thereof within the time required by law shall be based upon the valuation or assessment as finally determined. Each complaint shall state the amount of overvaluation, undervaluation, discriminatory valuation, or illegal valuation

complained of, and the treasurer may accept any amount tendered as taxes upon property concerning which a complaint is then pending, computed upon the claimed valuation as set forth in the complaint, and if such tender is not accepted no penalty shall be assessed because of the nonpayment thereof. The acceptance of such tender shall be without prejudice to the claim for taxes upon the balance of the valuation or assessment. A like tender may be made, with like effect, in case of the pendency of any proceeding in court based upon an allegedly excessive, discriminatory, or illegal valuation. If a complaint filed under this section for the current year is not determined by the board within the time prescribed for such determination, the complaint and any proceedings in relation thereto shall be continued by the board as a valid complaint for any ensuing year until such complaint is finally determined by the board. In such case, the original complaint shall continue in effect without further filing by the original taxpayer, his assignee, or any other person or entity authorized to file a complaint under this section.

* * * * *

APPENDIX F

OHIO REVISED CODE, SECTION 5715.30

The board of tax appeals shall prescribe for and furnish to all county boards of revision, county auditors, and county treasurers blank forms for all oaths of office, statements, returns, reports, tax lists and duplicates, abstracts, records of proceedings, complaints, notices of appeal, tax bills, receipts, and all other documents, files and records authorized or required by any law which relates to the assessment, levy, or collection of taxes or the reduction of taxes or by any rules, regulations, orders, or instructions of the board. The board shall prescribe a new form for tax lists and duplicates to insure proper administration of section 319.301 [319.30.1] and sections 323.151 [323.15.1] to 323.157 [323.15.7], inclusive, of the Revised Code. The board shall prescribe and furnish blank forms of records and papers for all proceedings and official actions authorized or required by any law which relates to the assessment, levy, or collection of taxes or by any rules, regulations, orders, or instruction of the board of tax appeals. Auditors, treasurers, all other officers, and all persons required to list property for taxation shall use true copies of such blank forms.

APPENDIX G

JOURNAL ENTRY OF THE COURT OF COMMON PLEAS IN ALUMINUM COMPANY OF AMERICA V. BOARD OF REVISION OF CUYAHOGA COUNTY

(Filed December 17, 1975)

Case No. 75-937942

COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ALUMINUM COMPANY OF AMERICA,
Appellant,

vs.

BOARD OF REVISION OF CUYAHOGA COUNTY
GEORGE V. VOINOVICH, COUNTY AUDITOR,
and
BOARD OF EDUCATION OF THE CLEVELAND
CITY SCHOOL DISTRICT,
Appellees.

JUDGE AUGUST PRYATEL

Based upon a review of the pleadings, transcript, and Stipulations of Fact filed herein and the Opinion of the Honorable George J. McMonagle in the case of Community For Better Living Inc., v. Board of Revision, Common Pleas Case No. 935156 and the cases jointly tried with said case, which Opinion is incorporated herein by reference:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the decision of the Cuyahoga County Board of Revision be, and it is, hereby reversed and the within action is remanded to the said Cuyahoga County Board of Revision.

IT IS FURTHER ORDERED that within forty-five (45) days of the effective date of this decree, the Appellant herein shall fully complete and file with the said Cuyahoga County Board of Revision, as an Amended Complaint, a Revised BTA Form 1 and 1(A) (as revised 12-15-74) indicating the tax year to which it applies.

IT IS FURTHER HEREBY ORDERED that the Cuyahoga County Board of Revision hear and decide each said Amended Complaint within ninety (90) days after filing of said Amended Complaint with it. Exception to the Appellees. Judgment for the costs hereof is hereby entered against the Appellees.

/s/ AUGUST PRYATEL
Judge

APPENDIX H

JOURNAL ENTRY OF THE COURT OF COMMON PLEAS IN JONES & LAUGHLIN STEEL CORP. V. BOARD OF REVISION OF CUYAHOGA COUNTY ET AL.

(Dated December 16, 1975)

Case No. 74-935,250

IN THE COURT OF COMMON PLEAS
STATE OF OHIO
COUNTY OF CUYAHOGA

JONES & LAUGHLIN STEEL CORPORATION,
Appellant,

vs.

BOARD OF REVISION OF CUYAHOGA COUNTY, *et al.*,
Appellees.

This case came on to be heard on the stipulations filed herein. For the reasons stated in the Memorandum of Opinion filed in Case No. 935,156:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the decision of the Cuyahoga County Board of Revision be, and it is, hereby reversed, and the within action is remanded to the said Cuyahoga County Board of Revision.

IT IS FURTHER ORDERED that within forty-five (45) days of the effective date of this decree, the Appellant herein shall fully complete and file with the said Cuyahoga County Board of Revision, as an Amended Complaint, a Revised BTA Form 1 and 1(A) (as revised 12-15-74), indicating the tax year to which it applies.

IT IS FURTHER HEREBY ORDERED that the Cuyahoga County Board of Revision hear and decide each said Amended Complaint within ninety (90) days after the filing of the said Amended Complaint with it. Exception to the Appellees. Judgment for the costs hereof is hereby entered against the Appellees.

/s/ THE HONORABLE GEORGE J. MCMONAGLE

APPENDIX I

MEMORANDUM OF OPINION OF THE COURT OF COMMON PLEAS IN SUNSHINE REALTY, INC., ET AL. V. CUYAHOGA COUNTY BOARD OF REVISION ET AL.

(Dated November 14, 1975)

Case No. 934,646 et al.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

SUNSHINE REALTY, INC., *et al.*,
Appellants,

v.

CUYAHOGA COUNTY BOARD OF REVISION, *et al.*,
Appellees.

GEORGE J. MCMONAGLE, *J.*:

On June 24, 1974, the Cuyahoga County Board of Revision (BR) summarily dismissed approximately 1400 Complaints as to the Assessment of Real Property. All of these had been timely filed. This was done without any prior notice to the taxpayer and without affording any taxpayer any opportunity to amend or otherwise conform his duly filed Complaint in light of the Board's decision. The dismissals were ostensibly in reliance on the *Stanjim* decision, 38 Ohio St. 2d 235, decided June 12, 1974.

The Supreme Court held in Stanjim that the obligation of a taxpayer to fully complete Board of Tax Appeals (BTA) Form 1 is a jurisdictional prerequisite to obtaining relief from a County Board of Revision; that a failure so to do constitutes a failure to satisfy the requirements of Revised Code Section 5715.19 and 5715.13. This decision

constituted an affirmance of the decision of the BR and BTA that the Complaints "did not comply with the requirements of the BTA for filing . . . and the Board of Tax Appeals Forms were not sufficiently completed". The subject Complaints were not completely filled out. This reason was stated as being the basis for the dismissal of the within Complaints.

The procedures with reference to the filling out of the Complaints in Cuyahoga County and the presentation of facts or evidence in support of a request for a decrease had been firmly established and followed in Cuyahoga County for years. This included the delaying of the presentation of such facts until the time of the hearing of the Complaint. The Court considers that the procedure followed in Cuyahoga County was in accordance with the Cuyahoga County BTA Form No. 1, in substantial compliance with the statutes and in accordance with the Opinion of the Cuyahoga County Prosecutor (Exhibit F herein) which had been adopted, approved and ratified by the BR and the BTA so as to be tantamount to a rule of the BR and BTA interpreting and applying the applicable statutes and so as to have in full force and effect such a rule. It was the compliance with said approved procedure, that is, the delaying of the providing of evidence which is referred to as pertinent information that brought about the subject dismissals.

Although mandated by Revised Code Section 5715.19 to "hear and render its decision on such complaint within 90 days after the filing thereof with the said board", these complaints had been pending before the Board of Revision for from eight to 44 months. Such failure to comply with the statute has obviously prejudiced rights of the appellants herein.

Many of the appeals that were summarily dismissed were for the years prior to 1973. Although timely filed, they had not been heard by the B.R.

If a pending appeal had not been disposed of prior to the listing of real properties for taxation and forwarding the tax bill therefor for a subsequent year, the said Complaint applies to the subsequent year. For example, if a Complaint was duly filed in 1972 as to the tax valuation for the year 1971 and the 1971 valuation was carried over into 1972, it was not necessary to file a Complaint as to 1972 in 1973. If the 1971 valuation was reduced when the Board heard the appeal in 1973, it would also constitute a reduction of the 1972 valuation even though a specific Complaint had not been filed for the year 1972. There were many instances where a Complaint was not actually filed, for example, during the year of 1974 as to the 1973 valuation because of the fact that the prior filed Complaint had not been disposed of. This situation also applied in many instances to prior years.

The summary dismissal of the subject Complaints obviously resulted in an unusually severe hardship on many taxpayers. The action of the B.R. unless reversed will constitute a grossly shocking misapplication of justice.

It is an elementary obligation of this Court to follow the decisions of the Supreme Court of Ohio if applicable to the facts of any case under consideration.

If the facts of an instant case are different than those of a cited case, general principals of law will apply.

The case of *The Stanjim Co. et al v. Board of Revision of Mahoning County et al,* decided by the Supreme Court of Ohio, was an appeal from the Board of Tax Appeals which had sustained an action of the Mahoning County B.R. in its dismissal of 38 Complaints as to the Assessment of Real Property for the tax year of 1971.

Revised Code Section 5715.29 specifies that the Complaint shall be on a form prescribed by B.T.A. The B.T.A. had prescribed a Complaint form which is referred to in the Stanjim decision. This is B.T.A. Form No. 1 (Exhibit A herein). However, the B.T.A. had prescribed and authorized the various counties to use different forms. While it had prescribed B.T.A. Form No. 1 (Exhibit A herein), it prescribed, approved and ratified the use of other forms. Although somewhat similar, they differ from B.T.A. Form No. 1 (Exhibit A herein) and from each other. Exhibit B herein is the Cuyahoga County form. Exhibit C is the Hamilton County form. Exhibit D is the Mahoning County form. As indicated, the Cuyahoga County Complaint form is not identical with the Mahoning County form which was the subject of the Stanjim decision.

Mahoning County form mandates the inclusion in it of "pertinent facts". The Cuyahoga County form "Exhibit B" merely states that "the following pertinent information *should* be submitted in support of this application". It contains no requirement that the information must be submitted in the Complaint.

The prescribing of this form (Exhibit B) by the B.T.A. for Cuyahoga County and its variation from B.T.A. Form No. 1 (Exhibit A) was obviously dictated by the circumstances which are peculiar to Cuyahoga County and discussed herein and in an effort to afford Cuyahoga County taxpayers due process which is a constitutional guarantee to which they are entitled. The import of the different forms is also readily appreciated when it is considered in conjunction with the Opinion of the Cuyahoga County Prosecutor (Exhibit F) and constitutes an authorization for and an approval and ratification of the procedures followed for years in Cuyahoga County.

The selection of, and the use of the word "should"

by the B.T.A. in the Cuyahoga County form was deliberate in view of the Cuyahoga County circumstances and the B.T.A. awareness of them. To say that a person should do something means that he ought to but it is not mandatory that he does. The dictionary states that "should" is actually weaker than "ought to".

American Heritage Dictionary

"should" in indicating obligation or necessity is somewhat weaker than "ought" and appreciably weaker than "must" and "have to".

Just 12 days after the announcement by the Supreme Court of its decision in the said *Stanjim* case, the Cuyahoga County B.R. summarily dismissed by resolution all pending Complaints in which the "pertinent information" section of the form was not completed. Thereafter, it repealed that resolution until the Supreme Court ruled on the motion for a rehearing. The motion for rehearing was overruled and appeal taken to the Supreme Court of the United States. This appeal was rejected. Thereafter, the resolution was in effect reenacted or reestablished and the Complaints dismissed. After the final dismissal of the Complaints by the Cuyahoga County B.R., the within appeals, together with approximately 1200 others, were taken to this Court. The within appeals were submitted for a decision by the Court on a Stipulation of Facts, which is contained in the Record herein, together with the briefs and arguments of counsel.

Both the appellants and appellees concede that if the summary dismissals by the B.R. are reversed, that the Complaints should be remanded to the B.R. for determination thereof. The appellees herein contend that regardless of any facts and circumstances peculiar to the within appellants or Cuyahoga County, Ohio, whatsoever, that unless the questions contained in a Complaint form were

all answered when filed, the B.R. has no jurisdiction to hear any Complaint.

The appellants herein advanced the following reasons why the decisions of the B.R. should be reversed and the actions remanded to the B.R.

(1) Stanjim did not require the Cuyahoga County Board of Revision to dismiss appellants' complaints.

(2) The Stanjim decision is distinguishable from appellants' cases.

(3) The Board of Revision was barred from dismissing appellants' complaints by its failure to act within ninety (90) days.

(4) The actions of the Board of Revision denied to appellants the equal protection of the law.

(5) The actions of the Board of Revision resulted in denial of due process of law, as required by both Federal and State Constitutions, because of

(a) retroactive application; and
(b) the impossibility of meeting the time requirements imposed.

A tremendous number of complaints are annually filed in Cuyahoga County. These are out of all proportion to those filed in any other county. There actually were 48,000 complaints filed in 1970 which required a decision by the B.R.

The tax bill is mailed to the taxpayers in Cuyahoga County. This is usually in the month of December of the taxable year in accordance with the statute although at times years past this has been delayed until a subsequent date. The last date for payment is approximately five weeks after the tax bill is mailed. It is during this period of time that all taxpayers would be required to evaluate

the assessment shown on their tax bill, to decide whether a complaint should be filed, to procure evidence to support it, to prepare for the trial thereof, and to file and follow the proceedings with reference to the complaint. It has been argued herein in support of the contentions of the appellees that the time for taking these steps is not so limited; that a taxpayer may go to the office of the County Treasurer or Auditor before his tax bill is mailed and can then determine from an examination of the county books what the current valuation of his property is to be and then make those determinations above outlined. It is ridiculous to even suggest that the hundreds of thousands of Cuyahoga County, Ohio, taxpayers should even go to the Administration Building and examine the county books in advance of receipt of their tax bill. The Court holds that the time within which a taxpayer must make the determinations and take the steps above outlined is confined to the period between the dates he receives his tax bill in the mail and the final date set for payment and every Cuyahoga County taxpayer should not be limited to this period for the preparation and presentation of his evidence. To confine it to this period of time would not comport with constitutional due process.

The B.T.A. itself became aware, after the announcement of the *Stanjim* decision, that if it were to strictly apply it to the taxpayers of Cuyahoga County, that it would be tantamount to unconstitutionally depriving thousands of Cuyahoga County taxpayers to the right of any review of assessments of real property made by the County Auditor. Such requirements being so unconscionably restrictive as to deprive taxpayers of their constitutional right of review of the action of a public official and so as to deprive taxpayers of both Federal and State constitutional due process rights.

The B.T.A. therefore hurriedly revised B.T.A. Form No. 1 as of December 15, 1974. It prescribed Form No. 1, Exhibit J herein, and Form No. 1A, Exhibit K herein. These include the following:

> Exhibit J:
>
> If the property complained of is income-producing, commercial, manufacturing or "special type", then Form 1A MUST BE COMPLETED and attached, or filed with the Board of Revision within 45 days of the last day for payment of the first half year's Real Estate tax collection; otherwise complainant understands the complaint will be dismissed."
>
> Exhibit K:
>
> IF THE PROPERTY COMPLAINED OF IS INCOME-PRODUCING, COMMERCIAL, MANUFACTURING OR "SPECIAL TYPE", THEN FORM 1A MUST BE COMPLETED AND ATTACHED TO FORM 1, OR FILED WITH THE BOARD OF REVISION WITHIN 45 DAYS OF THE LAST DAY FOR PAYMENT OF THE FIRST HALF YEAR'S REAL ESTATE TAX WITHOUT PENALTY.
>
> IF THE PROPERTY IS SINGLE OR DOUBLE RESIDENCE AND IS NOT INCOME PRODUCING, OR IS VACANT AND UNUSED LAND, THEN FORM 1A MUST BE FILED PRIOR TO, OR AT, THE HEARING BEFORE THE BOARD OF REVISION.

It is obvious that these quoted provisions eliminate requirements as to facts to be contained in the Complaint; that the B.T.A. has determined that the quoted procedure specified in the said forms J and K provides for a substantial compliance with 5715.13. The provisions contained therein also are in accordance with the procedure that had been previously followed for years in Cuyahoga County, Ohio, and which this Court feels constitute a substantial compliance with 5715.13, 5715.29 and 5715.30. All of the subject complaints do comply with R.C. Section 5715.19.

The newly adopted B.T.A. Form 1 (Exhibit J and K) eliminates the constitutional infirmities which are found to have existed by the action of the B.R. in the dismissal of the instant cases.

The Court has come to the conclusion that the action of the B.R., with reference to these Cuyahoga County complaints, has violated basic constitutional rights of appellants.

The *Stanjim* decision did not arise out of action by the Cuyahoga County B.R. The Court must, therefore, determine whether that decision is applicable to the facts herein and if it is applicable, whether or not it may be considered that the Supreme Court determined the constitutional and other questions that are presented herein.

It must also be observed that in the within Court all parties were afforded a full evidentiary hearing and as a result of several court hearings, all evidence bearing upon the issues herein has been contained in a detailed Stipulations of Facts filed herein. While the Record in the *Stanjim* case does contain testimony of two witnesses, that is, the Auditor of Mahoning County, Ohio, and Mr. Kaplan, the representative of the taxpayers therein, various issues which are part of this appeal were not the subject of any evidence; nor otherwise presented for determination.

Attention is called to Exhibit 6, a communication from George V. Voinovich, Cuyahoga County Auditor, who is also a member of the B.R. This includes the following:

> "As a matter of fact the Board of Revision has been relying on a Prosecutor's decision that was rendered in 1971 which specifically stated that this information was not necessary on the complaint at the time it was filed. I am quite concerned that under the Stanjim decision many complainants will not receive their day in court which is repugnant to our legal system."

The issues presented as to constitutional rights applicable to the facts of this case were the subject of evidence herein and were not even presented in Stanjim. Since the facts and circumstances herein vary materially from those which controlled the decision in Stanjim, this Court is not precluded from deciding these appeals on the legal and constitutional propositions applicable herein. The Court holds that the issues decided herein were not decided by the Supreme Court in Stanjim.

A discussion of appellants' claimed basis for reversal follows:

(1) Stanjim did not require the Cuyahoga County Board of Revision to dismiss appellants' complaints.

This obviously is a contention that the B.R. had the right within its discretion to dismiss the complaints without a hearing or to hear and decide them as it had in the past. The Stipulations herein shows that subsequent to June 12, 1974, the B.R. entered its decision (Stipulation 15A) on approximately 250 complaints (seeking decreases) filled out as were the subject complaints and that also subsequent to June 12, 1974, it heard and decided approximately 100 complaints (Stipulations 15B) (seeking decreases) which were filled out as were the subject complaints.

Stipulation 16 states that subsequent to June 12, 1974, and subsequent to August 21, 1974, the B.R. of other Ohio counties heard and decided complaints filled out as were the subject complaints. Since it is the holding of this Court that the summary dismissal of the subject complaints was illegal, it is likewise the holding of this Court that the procedure wherein the 350 cases so disposed of by the B.R. after June 12, 1974, was valid. However, the fact that the B.R. did proceed, as it had, with reference to 350 com-

plaints identical to the subject complaints, does materially bear upon appellants' claim that the action of B.R. herein did deny appellants the equal protection of the law (see Claim #4).

(2) The Stanjim decision is distinguishable from appellants' cases.

Each of the complaints herein were signed, notarized and as required by R.C. 5715.19, did state "the amount of overvaluation . . . complained of . . ." The within complaints were completed in substantial compliance with the Cuyahoga County B.T.A. form (Exhibit B) having consideration for the approved Cuyahoga County procedure.

The Court finds that the facts and the issues arising therefrom do distinguish Stanjim from the instant cases.

A different B.T.A. form was involved in the Mahoning County Stanjim cases than in the within cases.

The requirements as to the filing and presentation of information is materially different.

The Cuyahoga County B.R., and also the B.T.A., had approved and ratified the procedure which had been complied with by the appellants. In Stanjim the appellants apparently refused to comply with the requirements of the Mahoning County B.R.

The Mahoning County B.R. acted on the complaints within 90 days of their filing. Here, the B.R. failed to comply with 5715.19 in that it did not act on the complaints until after they had been pending for from eight to 44 months.

Elementary due process was accorded to the Stanjim appellants and was denied to appellants herein.

The Record herein clearly establishes that appellants were not afforded the equal protection of the law.

There is nothing in the Stanjim record that indicates that the Mahoning County B.R. treated the complaints of

the Stanjim taxpayers differently than they did those of other taxpayers. The Record in these appeals shows the contrary to be the fact.

DUE PROCESS OF LAW

11 O. Jur. 2d, Constitutional Law §697.

The words "due process of law" import that there is to be a course or process of law that is just and proper and to which persons are entitled.

11 O. Jur. 2d, Constitutional Law §701.

Due process of law is an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs.

EQUAL PROTECTION, EQUAL PROTECTION OF THE LAWS

11 O. Jur. 2d, Constitutional Law §670.

Equal protection of the laws means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances.

11 O. Jur. 2d, Constitutional Law §668.

The equal protection of the law provision in Article 1 of the Ohio Constitution is substantially the same as the guaranty in that respect contained in the Fourteenth Amendment to the Federal Constitution.

The procedure with reference to the time and the manner of providing information had become firmly established in Cuyahoga County for years. Even in 1974, prior to June 12, 1974, B.R. had heard, accepted evidence, and decided thousands of complaints in the same manner as it had for years where the complaints were filled out as were the subject complaints.

In Stanjim, the Supreme Court commented:
P. 236:

"Appellants make much of the fact that it had been the past practice of the board of revision to accept partially completed BTA Forms 1 as sufficient, conclude that any change in this policy should have been preceded by some sort of notice. Although one might feel some sympathy for appellants, we are compelled to point out that the cautionary statements of the reverse side of BTA Form 1 should have alerted them to the hazards of relying upon such a *dubious*, albeit locally sanctioned, practice."

Webster's New Twentieth Century Dictionary defines "dubious":

"ambiguous, vague, causing doubt, not clear".

This Court finds that even though the Mahoning County practice was dubious, there was nothing dubious about the Cuyahoga County practice. The Court further finds that such practice was sanctioned by the B.T.A. and was not merely a locally sanctioned practice; that the B.T.A. sanction constituted "the act of a recognized authority confirming or ratifying an action; authorization; authoritive permission." (Webster's definition of "sanction".) The said Cuyahoga County procedure is, therefore, considered by the Court as being valid.

The parties have stipulated that on June 7, 1971, at the request of the B.R., the Cuyahoga County Prosecuting Attorney had rendered an opinion to the Cuyahoga County Board of Revision which includes the following:

Stipulation 6, Exhibit F:

It is our opinion, however, that the second part of the complaint pertaining to the information in support of the complaint, does not raise a jurisdictional issue inasmuch as the burden is upon the complainant to prove by probative evidence that he is entitled to

the relief sought, and that he may produce such evidence at the hearing of his complaint.

It is further stipulated herein that the appellants herein did rely on said opinion and that the procedure followed by the appellants was also in accordance with instructions issued by the B.R. staff.

Stipulation 7: Applicable to All Cases Consolidated for Hearing and Trial.

That for many years prior to June 7, 1971 and thereafter, it has been the practice of the Cuyahoga County Board of Revision not to require the pertinent information section of the Cuyahoga County Complaint form to be filled in and it has heard and decided many thousands of cases granting decreases in assessed value where the information requested by this section of the Cuyahoga County Complaint form was not filled in at all, and further heard and decided other cases in which the pertinent information section was partially filled in;

Stipulation 8:

That this Complainant and other Complainants, their agents and attorneys relied upon the aforesaid practice and/or the opinion of the Cuyahoga County Prosecutor in preparing and filing Cuyahoga County Complaint forms;

Stipulation 9:

That members of the Cuyahoga County Board of Revision staff have given specific instructions to many taxpayers that it was not necessary to complete the pertinent information section of the Cuyahoga County Complaint form in reliance upon the opinion of the Cuyahoga County Prosecutor, as evidenced by letter dated June 28, 1974, from George V. Voinovich, Auditor of Cuyahoga County, a copy of which is attached hereto as Exhibit "G", although the personnel of the Board of Revision of Cuyahoga County, Ohio had been instructed to call to the attention to taxpayers

requesting Complaint forms of the requirements as set forth on the Complaint form by the Board of Tax Appeals of Ohio;

The said opinion had obviously been adopted by the B.R. and in the opinion of the Court, its subsequent actions constituted a ratification and approval by B.R. so as to have effective a constitutional rule of the Cuyahoga County B.R. that is applicable herein. The B.T.A. has by statute almost complete supervisory power over the B.R. The B.R. is actually an agency of the B.T.A. The failure of the B.T.A. to exercise its supervisory powers by annulling said approved Cuyahoga County procedure after it undeniably knew of it and its application constituted a sanctioning of it—an approval and ratification of it by B.T.A.

The B.T.A. knew of the Cuyahoga County procedure which is the subject of these appeals. It had prescribed the Cuyahoga County B.T.A. Form 1 to which the practice conformed. It beyond any doubt knew of the opinion of the Cuyahoga County Prosecuting Attorney and that it was relied upon by the taxpayers. It also knew of the said instructions by the staff of the B.R.

The only logical and reasonable inference that can therefore be drawn from the stipulated facts is that the B.T.A. sanctioned, approved and ratified the said Cuyahoga County procedures. This sanction and approval may not now, nor could it on June 24, 1974, be disaffirmed to the substantial prejudice of the appellant taxpayers herein.

If B.R. had afforded the appellants the opportunity to amend or supplement their complaints, the appellants contentions about the failure to afford them due process would have no validity. Such opportunities were not afforded them. It appears from the Stanjim decision that the Stanjim appellees were afforded such an opportunity and they bluntly refused it.

The Supreme Court brief of appellees in Stanjim, p. 2:

"It is interesting to note that during the year's period of time, Grogan Management Company *refused* and continued to refuse to correct or amend its complaints so as to abide by the established rules of practice of the Board of Tax Appeals".

This obviously was predicated in part upon the testimony of Mr. Kaplan, the representative of the Stanjim appellants as contained in the Supreme Court Record Vol. 11, Pages 424, 425, 426, 427, 428 and 429. Record Page 459, Mr. Haines, Assistant Prosecuting Attorney, in argument:

"The fact is that on April 4, he was notified by Mr. Olenick in more than sufficient time for an amendment to the complaint to be filed to entitle Mr. Kaplan to hearings he requested. It was Mr. Kaplan's judgment that he would pursue this matter in court and wait for the hearings."

It is the law that a right to appeal includes the obligation to conform to reasonable procedural requirements, either statutory or administrative. To hold that a taxpayer is so locked in a complaint that he may never amend it, correct it or supplement it, particularly in respects pertaining to evidentiary matters, and to summarily dismiss it without affording him any opportunity to amend, correct or supplement it is to fail to afford him due process of law.

The Record indicates that all the B.R. procedures in Mahoning County, except, of course, the Court procedures, transpired within 90 days of the filing of the complaints. All of the within complaints were on file with the Cuyahoga County B.R. from eight to 44 months. Revised Code Section 5715.19 mandates the B.R. to hear and render its decision upon each complaint within 90 days. The appellants herein contend that this provision prohibited the

B.R. from dismissing these actions after 90 days. The statute itself does not contain any sanction for failure to comply with it.

The Court does not agree that the failure of the B.R. to hear and decide a case within 90 days divests it of any rights it may have to dismiss it. It is impossible to require the Cuyahoga County B.R. to process the thousands of complaints filed with it in the same fashion as do the other 87 counties. We do hold, as applicable to the instant appeals, that any infirmities in a duly filed complaint must be called to the attention of the taxpayer by the B.R. within the said 90 days and afford him the opportunity to amend or correct or supplement it; that otherwise such infirmity is waived. We consider this to not conflict with Stanjim because as previously pointed out, the Record in that case indicated that those appellants were afforded a timely opportunity to amend, correct or supplement their complaints.

As appears in stipulations herein, other counties without the volume of Cuyahoga County have taken a common-sense approach to the application of the Stanjim decision and have treated it prospectively. B.T.A. has since amended B.T.A. Form 1 in order to provide a reasonable and common-sense means for the processing of complaints by following to some extent the procedure previously followed in Cuyahoga County; that is, the taxpayers are allowed time after the filing of the complaint to procure and file what is considered pertinent information. (See Exhibit J and K).

Appellants have contended they were not afforded equal protection of the law because those seeking an increase as to the assessment of real property were not required to include information as were those requesting a decrease. This contention has been disposed of by the

Supreme Court in the case of *Cardinal Savings and Loan Company v. Board of Revision*, 44 Ohio St. 2d 13. Such contention was the issue presented to and decided by the Supreme Court. The holding was contrary to the contentions of appellants herein.

The Stanjim cases involved requests for decreases. The non-applicability of Stanjim to the within facts is amply discussed herein. There are facts pertaining to the different appellants herein which are contained in separate stipulations on file herein. The Court finds that while such facts do bolster the contentions of the appellants as to why the B. R. decisions should be reversed, the Court finds that the General Stipulations Applicable to All Cases Consolidated for Hearing and Trial warrant the decision of the Court herein.

The Court finds that the Cuyahoga County Board of Revision erred to the substantial prejudice of the appellants herein in its summary dismissal of the subject complaints; that the procedure followed constituted compliance with the applicable statutes and procedures prescribed by the B.T.A.; that, however, insofar as it may be considered that they were not in compliance therewith, the Court finds as indicated herein that requirements to follow procedures other than the appellants did, constituted violation of the constitutional rights of the appellants to be afforded due process of the laws and equal protection of the laws.

The Court finds that the Board of Revision was obliged, prior to any summary dismissal of the complaints, to afford the appellants the reasonable opportunity to amend, correct or supplement the complaints by providing information of the nature required to be provided in the current B.T.A. Form 1 (as revised December 17, 1974) and to thereupon to proceed to hear and decide them. The Court finds that the providing of information required

in said revised form and in the manner and at the times specified therein does comport with all constitutional standards.

The Court is aware that such form and the procedure to be followed in connection with it was not in existence on June 24, 1974, but rather than the court itself fashioning a procedure which comports with constitutional standards, feels it is more expeditious to mandate the use of such forms.

It will, therefore, be ordered that the decision of the Cuyahoga County Board of Revision in summarily dismissing the complaints in each case herein, be and is hereby reversed and each case is hereby remanded to the Cuyahoga County Board of Revision.

It is further ordered that within 45 days of the effective date of this decree, the appellants shall fully complete and file with the Board of Revision as an amended complaint the revised B.T.A. Form 1 and 1A indicating tax year to which it applies. Failures to so file said form shall be grounds for dismissal of a complaint.

It will be further ordered that the Board of Revision hear and decide each said complaint within 90 days after the filing of the said amended complaint with it.

Exceptions to the appellees. Judgment for the costs hereof shall be entered against appellees.

/s/ GEORGE J. MCMONAGLE, *Judge*

APPENDIX J

JOURNAL ENTRY AND OPINION OF THE COURT OF APPEALS IN ALUMINUM COMPANY OF AMERICA AND JONES & LAUGHLIN STEEL CORPORATION V. CUYAHOGA COUNTY BOARD OF REVISION ET AL.

(Dated August 25, 1977)

No. 35779, 35801, 35802, 35816

COURT OF APPEALS OF OHIO,
EIGHTH DISTRICT
COUNTY OF CUYAHOGA

ALUMINUM COMPANY OF AMERICA
and
JONES & LAUGHLIN STEEL CORPORATION,
Appellees,

vs.

CUYAHOGA COUNTY BOARD OF REVISION,
et al.,
Appellants.

PARRINO, *J.*

This cause came on to be heard upon the pleading and the transcript of the evidence and record in the Common Pleas Court, and was argued by counsel; on consideration whereof, the court certifies that in its opinion substantial justice has not been done the party complaining, as shown by the record of the proceedings and judgment under review, and judgment of said Common Pleas Court is reversed. Each assignment of error was reviewed by the court and upon review the following disposition made:

The four cases which comprise this appeal were argued before this Court on the same day that 232 cases which were consolidated for appeal under the name *Sunshine Realty, Inc., et al. v. Cuyahoga County Board of Revision, et al.,* (Sunshine Realty) Nos. 35653, et cetera were also heard.

Appellants, Cuyahoga County Board of Revision and Cleveland Board of Education, claim that it was error for the Court of Common Pleas to reinstate the complaints for reduction of real property valuation filed by appellees Aluminum Company of America (hereinafter "Alcoa") and Jones & Laughlin Steel Corporation (hereinafter "J & L").

The Cuyahoga County Board of Revision had dismissed appellees' complaints on authority of *Stanjim Co. v. Bd. of Revision* (1974), 38 Ohio St. 2d 233, for the reason that appellees had failed to completely fill in the "pertinent facts" section of their complaints.

Appellants' Assignments of Error, identical to those asserted in the consolidated appeal involving *Sunshine Realty, Inc., et al. v. Bd. of Revision, et al., supra,* are as follows:

"1. The judgment of the lower Court finding that the Board of Revision had jurisdiction of the real estate tax complaints at issue herein and remanding said complaints to the Board of Revision is contrary to law.

"2. The judgment of the lower court permitting the complainants to file amended complaints is contrary to law.

"3. The judgment of the lower court ordering the Board of Revision to hear and decide said amended complaints within 90 days is contrary to law."

The stipulations contained in this appeal include all those which were made in the *Sunshine Realty* consolidated appeal, *supra,* plus additional stipulations which appellants claim distinguish this appeal from *Sunshine Realty, supra.*

For the reasons stated in *Sunshine Realty, supra,* we hold that *Stanjim Co. v. Bd. of Revision* (1974), 38 Ohio St. 2d 233, is applicable to real property tax practice in Cuyahoga County; that BTA Form No. 1 and the Cuyahoga County Complaint Form are not distinguishable; that the failure of the Cuyahoga County Board of Revision is to raise the issue of *Stanjim*-like jurisdictional defects within ninety days after the appellees' complaints were filed did not waive the error; that R.C. 5715.19 and 5715.13 are to be read *in pari materia* and that the statute of limitations of R.C. 5715.19 and 323.17 is applicable to R.C. 5715.13; that complaints for reduction of real property valuation may not be amended to meet jurisdictional requirements after the statute of limitations has run; that the actions of the Board of Revision did not violate either the Due Process Clause or the Equal Protection Clause of the Fourteenth Amendment; and that R.C. 5715.13 and 5715.19 do not violate the Due Process Clause of the Fourteenth Amendment.

Alcoa and J&L have raised additional reasons than those asserted in *Sunshine Realty, supra,* why the decision of the Common Pleas Court, reversing the dismissals of the appellees'—taxpayers' complaints by the Cuyahoga County Board of Revision, should be affirmed.

Alcoa and J & L argue that their submission of detailed appraisals to the Board of Revision satisfied the jurisdictional, informational requirements of R.C. 5715.13.

Alcoa filed a "verified complaint" for reduction of real property valuation for the 1972 tax year on January 15, 1973. (Alcoa Stipulation 21). On January 25, 1974,

"Alcoa filed with the Board of Revision three copies of its appraisal of its Cleveland Works for the tax years 1972 and 1973." (Alcoa Stipulation 26).

J & L's Stipulation 21 states that:

> "[O]n or about January 15, 1973 the Aluminum Company of America ('Alcoa')* filed a verified complaint with the Board of Revision requesting decreases in the assessed values of certain parcels of its real property listed therein (known as the Cleveland Works) for the respective tax years 1972 and 1973 . . . "

On January 29, 1974, J & L filed with the Board of Revision "three copies of its appraisal of its Cleveland Works for the tax years 1972 and 1973 . . . ." (J & L Stipulation 27).

Alcoa and J & L claim that the Supreme Court in *Griffith v. Cuyahoga County Bd. of Revision* (1975), 44 Ohio St. 2d 225, 228, suggested that a "prior narrative appraisal" could satisfy the informational requirements of *Stanjim* and R.C. 5715.13. We need not reach this issue because even if previously filed appraisals could satisfy the requirements of *Stanjim* and R.C. 5715.13, the appraisals filed with the Board of Revision by both Alcoa and J & L were not timely or under oath when filed.

As we held in *Sunshine Realty, supra,* a taxpayer may not amend his complaint for reduction after the statute of limitations has run. To allow Alcoa and J & L to supply the missing "pertinent facts" in their complaints with appraisals filed over one year after their complaints had been filed would be contrary to our holding in *Sunshine Realty, supra.*

Alcoa and J & L have conceded in their joint Answer Brief that their appraisals were not verified by oath at the time the appraisals were filed with the Board of Re-

* J & L mistakenly referred to "the Aluminum Company of America" in J & L's Stipulation 21.

vision. (Answer Brief of Appellees, page 10). We cannot agree with their contention that the testimony of their appraisers before the Board of Revision satisfied the requirement of an oath pursuant to R.C. 5715.13.

R.C. 5715.13 provides:

> "The county board of revision shall not decrease any valuation complained of unless the party affected thereby or his agent makes and files with the board a written application therefor, *verified by oath,* showing the facts upon which it is claimed such decrease should be made." (Emphasis added).

Even if the appraisals of Alcoa and J & L had been timely filed, the fact that the appraisals were not verified by oath prior to the running of the state of limitations is an omission which is fatal under R.C. 5715.13.

Finally, the appraisals of Alcoa and J & L were not made part of the appellate record. We are therefore unable to review those appraisals pursuant to the suggestion in *Griffith v. Bd. of Revision,* 44 Ohio St. 2d at 228.

Alcoa and J & L assert that equal protection and due process are violated when persons who seek increases in tax valuations are not required to state the "pertinent facts" per R.C. 5715.13 while persons seeking tax decreases are required to state the "pertinent facts". The trial court correctly concluded (Memorandum of Opinion page 14), that this issue has been decided against Alcoa and J & L in the case of *Cardinal Federal S. & L. Assn. v. Bd. of Revision* (1975), 44 Ohio St. 2d 13.

Lastly, Alcoa and J & L assert that the pertinent facts section of the Cuyahoga County Complaint Form is not applicable to their large industrial complexes. Appellees state at page 13 of their Answer Brief:

> "It is apparent from a reading of the complaint form itself that it was not designed to apply to indus-

trial complexes which had been developed over a period of many years."

Alcoa's Stipulations 36, 37, and 38 indicate that Alcoa's Cleveland Works consists of 76 buildings containing over 1,800,000 square feet of floor space situated on approximately 140 acres of land; that 96% of the floor area was constructed prior to 1961 and that some buildings are vintage 1918; and that the Cleveland Works is covered by a multi-state blanket mortgage.

J & L's Stipulations 43, 44, and 45 state that J & L's Cleveland Works consists of 148 buildings containing over 3,000,000 square feet of floor space situated on approximately 371 acres of land; that J & L purchased the original facilities in 1942; and that the Cleveland Works is covered by a multi-state blanket mortgage.

We hold that for this Court to say that BTA Form No. 1 and the Cuyahoga County Complaint Form do not apply to "large industrial complexes" would be an unwarranted invasion of the prerogative and purview of the Board of Tax Appeals which promulgates tax complaint forms pursuant to R.C. 5715.29 and 5715.30. Whether tax complaint forms should be specially revised for "large industrial complexes" is a matter better left to the Board of Tax Appeals. Accordingly, we hold that Alcoa and J & L were required to complete the pertinent facts section of the Cuyahoga County Complaint Form.

For the above reasons and for the reasons stated in *Sunshine Realty, Inc., et al. v. Bd. of Revision, et al., supra*, we sustain the appellants' three assignments of error and reverse the decision of the Court of Common Pleas.

Rendering the decision which the Court of Common Pleas should have rendered, we affirm the dismissal of appellees' complaints made by the Board of Revision.

APPENDIX K

JOURNAL ENTRY AND OPINION OF THE COURT OF APPEALS IN SUNSHINE REALTY, INC., ET AL. V. CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

(Dated August 25, 1977)

Nos. 934,646, et al

COURT OF APPEALS OF OHIO
EIGHTH DISTRICT, COUNTY OF CUYAHOGA

SUNSHINE REALTY, INC., et al.,
Appellees,

vs.

CUYAHOGA COUNTY BOARD OF REVISION, et al.,
Appellants.

PARRINO, *J.*

This cause came on to be heard upon the pleading and the transcript of the evidence and record in the Common Pleas Court, and was argued by counsel; on consideration whereof, the court certifies that in its opinion substantial justice has not been done the party complaining, as shown by the record of the proceedings and judgment under review, and judgment of said Common Pleas Court is reversed. Each assignment of error was reviewed by the court and upon review the following disposition made:

In 1974, the Cuyahoga County Board of Revision dismissed approximately 1400 pending complaints for reduction of real property valuation on authority of *Stanjim Co. v. Bd. of Revision* (1974), 38 Ohio St. 2d 233. Appeals were taken from many of those dismissals to the Cuyahoga County Court of Common Pleas. The Court of Common Pleas reversed the dismissals, remanded the complaints

to the Board of Revision, ordered that the complaining taxpayers be given forty-five days in which to amend their complaints and further ordered that the Board of Revision "hear and decide each Amended Complaint within ninety (90) days after the filing of the said Amended Complaint with it."

The Board of Revision and the Cleveland Board of Education appeal to this Court from the order of the Court of Common Pleas. The present appeal is comprised of 232 cases consolidated for review.

Because appellants' Assignments of Error are interrelated, we will treat them together for purposes of discussion.

ASSIGNMENTS OF ERROR

"1. The judgment of the lower Court finding that the Board of Revision had jurisdiction of the real estate tax complaints at issue herein and remanding said complaints to the Board of Revision is contrary to law.

"2. The judgment of the lower court permitting the complainants to file amended complaints is contrary to law.

"3. The judgment of the lower court ordering the Board of Revision to hear and decide said amended complaints within 90 days is contrary to law."

The complaints involved in this appeal had been pending before the Board of Revision for periods up to forty-four months prior to the announcement of *Stanjim Co. v. Bd. of Revision, supra,* on June 12, 1974. In every case, each taxpayer had timely submitted its complaint for reduction of real property valuation to the Cuyahoga County Board of Revision on the "Cuyahoga Complaint Form." As stipulated by the parties, the Cuyahoga County

Complaint Form was in official use for the years 1966 through 1973.

In every case involved in this appeal, each taxpayer failed to provide complete information under the section of the complaint form captioned, "THE FOLLOWING PERTINENT INFORMATION SHOULD BE SUBMITTED IN SUPPORT OF THIS APPLICATION."

By resolution dated June 24, 1974, the Board of Revision resolved that:

". . . being duly apprised of the fact there are Complaints as to the assessment of Real Property still pending before this Board, wherein a part of said complaints entitled 'pertinent information' have no information or there appears the words, 'all other pertinent data substantiating this complaint of overvaluation will be presented at requested hearing,' or similar words; therefore, in light of the case of Stanjim Company vs. Board of Revision (1974) 38 O.S. 2d., 233, decided June 12, 1974 by the Supreme Court of Ohio, and upon advice of the County Prosecutor each of such complaints, which are identical or similarly identified with those complaints described in the Stanjim case, are hereby dismissed and the respective Hearing Boards are hereby instructed to proceed according to this resolution."

Stanjim Co. v. Bd. of Revision, supra, (hereinafter *Stanjim*), referred to in the resolution of the Board of Revision, concerned a situation where taxpayers in Mahoning County filed thirty-eight complaints as to the assessments of their real property for the tax year 1971. The *Stanjim* complaints were filed on BTA Form No. 1. The taxpayers in *Stanjim* left incomplete that portion of BTA Form No. 1 entitled "PERTINENT FACTS." BTA Form No. 1 was prescribed and furnished by the Ohio Board of Tax Appeals pursuant to R.C. 5715.29 and 5715.30.

The Supreme Court affirmed the dismissal of the complaints by the Mahoning County Board of Revision. The court held that "full compliance with R.C. 5715.19 and 5715.13 is necessary before a county board of revision is empowered to act on the merits of a claim." 38 Ohio St. 2d at 235. The court further stated that "BTA Form 1 represents a lawful interpretation of the minimal, data requirements of R.C. 5715.19 and 5715.13." 38 Ohio St. 2d at 236.

The failure to complete the prescribed BTA complaint forms was a jurisdictional defect which prevented the *Stanjim* taxpayers from properly invoking the power of the board of revision.

In a Memorandum of Opinion included in the present appellate record, the trial court[1] held that *Stanjim* was inapplicable to the circumstances of taxpayers in Cuyahoga County. Our inquiry, therefore, is directed to the question whether the trial court successfully distinguished *Stanjim* on the facts presented to us in this appeal.

The present cases were tried below on Stipulations of Fact, and the original papers filed with the Board of Revision. The parties stipulated that in a formal opinion dated June 7, 1971, the Cuyahoga County Prosecutor advised the Board of Revision that the "pertinent information" portion of the Cuyahoga County Complaint Form need not be completely filled in prior to the date of the hearing on the taxpayer's complaint. The prosecutor reasoned:

> "It is our opinion . . . that the second part of the complaint pertaining to the information in support of the complaint, does not raise a jurisdictional issue inasmuch as the burden is upon the complainant to prove by probative evidence that he is entitled to the relief sought, and that he may produce such evidence at the hearing of his complaint."

[1] All the cases consolidated in this appeal were not tried before the same trial judge. The lengthy Memorandum of Opinion prepared by one judge was apparently relied on and adopted by other judges who heard the tax appeals in the Court of Common Pleas. The parties have presented their appeals to this Court as if the reasoning of the Memorandum of Opinion applies to every case in this consolidated appeal.

The lower court held that the prosecutor's opinion had become part of the approved Cuyahoga County procedure for the handling of tax revaluations. Such procedure was sanctioned, approved, and ratified by both the Board of Revision and the Board of Tax Appeals, thus making the Cuyahoga County procedure effective as "a constitutional rule."

The court rendered its decision without benefit of *Griffith v. Bd. of Revision* (1975), 44 Ohio St. 2d 225. In *Griffith*, the Supreme Court applied the rule of *Stanjim* to Cuyahoga County and the Cuyahoga County Complaint Form. Further, the court rejected the same argument, made to the court below, that the existence of the prosecutor's opinion distinguished *Stanjim* and made it inapplicable to Cuyahoga County. 44 Ohio St. 2d at 227-228.

The lower court distinguished *Stanjim* on the basis that the Mahoning County complaint forms involved in *Stanjim* differed significantly from the Cuyahoga County Complaint Forms. The court based its distinction on the fact that BTA Form No. 1 used the caption, "PERTINENT FACTS", while Cuyahoga County used the caption, "THE FOLLOWING PERTINENT INFORMATION *SHOULD BE SUBMITTED* IN SUPPORT OF THIS APPLICATION." (Emphasis added). By using the words, "should be submitted," the court reasoned that the giving of the pertinent information was not mandatory because "should" does not mean "must" or "have to".

Griffith v. Bd. of Revision, supra, rejected the court's reasoning implicitly since *Griffith* dealt with the Cuyahoga County Complaint Form and an appeal arising out of this county.

Additionally, we find the difference between the words, "PERTINENT FACTS", and "THE FOLLOWING PERTINENT INFORMATION SHOULD BE SUBMITTED IN SUPPORT OF THIS APPLICATION," insubstantial. *Griffith* specifically noted that BTA Form No. 1 contained cautionary statements on its reverse side which should have alerted the taxpayers to the hazards of relying on "a dubious, albeit locally sanctioned practice." 44 Ohio St. 2d at 228.

In the present case, both BTA Form No. 1 and the Cuyahoga County Complaint Form contain identical cautionary words on their reverse sides:

> "Complainant *should give* the latest book value of the land and buildings and improvements to the land separately, as of the end of the year, amount of insurance carried on the building, the amount of the mortgage and all data relating thereto such as value given to the bank to secure a prospective loan."
>
> * * * * *
>
> "The mere statement that taxes are too high are no grounds for a complaint. Section 5715.19 of the Revised Code provides that complainant shall set forth the 'over valuation, under valuation or illegal valuation complained of.' Section 5715.13 of the Revised Code provides that the Board *shall not make any reduction unless the facts justifying the reduction are set forth and sworn to. If complainant does not comply with these sections, the Board is without jurisdiction to consider the complaint.*" (Emphasis added).

The lower court also held that the failure of the Board of Revision to timely raise the issue of a jurisdictional defect resulted in a waiver of any such defect. (Memorandum of Opinion, page 14). The court based this holding on R.C. 5715.19, which provides in part:

> ". . . [T]he county board of revision . . . shall hear and render its decision on such complaint within ninety days after the filing thereof with the said board."

We find such conclusion erroneous and unsupported by law. The well stated rule is that objections directed to a want of subject matter jurisdiction may be raised at any stage of the proceeding and even for the first time on appeal. *Bergstrom Paper Co. v. Bd. of Revision* (Summit Cty. App. February 4, 1976), No. 5004.

The purpose of the ninety-day period of R.C. 5715.19 is to get the county boards of revision to act promptly. The ninety-day period was not designed to validate invalid complaints where the boards of revision have not acted within the ninety days. R.C. 5715.19 does not state that complaints shall be made valid if jurisdictional defects are not promptly pointed out to the complainant. *Cf. State ex rel. Svete v. Bd. of Elections* (1965), 4 Ohio St. 2d 16, 17 *and State ex rel. Jones v. Farrar* (1946), 146 Ohio St. 467.

The trial court ordered that the taxpayers be given an opportunity to amend their complaints to meet jurisdictional requirements despite the fact that the statute of limitations for the filing of complaints had run.

R.C. 5715.19 provides in part that a complaint,

> ". . . shall be filed on or before the twentieth day of December, or on or before the time limited for payment of taxes for the first half year, extended under section 323.17 of the Revised Code . . . ."

R.C. 323.17 provides:

> "The board of county commissioners, by resolution spread upon its journal, may extend the time of payment of taxes for not more than thirty days after the time fixed by sections 323.10, 323.12, and 323.16 of the Revised Code . . . ."

Our reading of *Stanjim* indicates that the Supreme Court has implicitly held that a complaint, filed without

a complete "pertinent facts" section may not be amended after the running of the statute of limitations provided in R.C. 5715.19 and 323.17. Further, this court has held in an unreported decision that the "relation back" theory of Civ. R. 15(C) does not apply to tax proceedings before boards of revision. Civ. R. 1; *Morris Levin, et al. v. Cuyahoga Bd. of Revision* (May 6, 1976), No. 34730. Therefore, we conclude that taxpayers who fail to meet the jurisdictional informational requirements of R.C. 5715.19 and 5715.13 may not amend their complaints after the statute of limitations has run.

The additional argument has been raised by the taxpayers that whereas R.C. 5715.19 establishes a statute of limitations for the filing of "*a complaint* against any valuation or assessment . . ." (Emphasis added), R.C. 5715.13[2] sets no time limit for the filing of "a written application . . . , verified by oath, showing the facts upon which it is claimed such decrease should be made." The taxpayers argue that since R.C. 5715.13 sets no time limit within which the "pertinent facts" must be filed, such facts may be filed at any time prior to the hearing of the complaint.

It is our opinion that the taxpayers' argument was rejected in *Stanjim*. *Stanjim* held that:

> ". . . full compliance with R.C. 5715.19 *and* 5715.13 is necessary before a county board of revision is *empowered* to act on the merits of a claim." 38 Ohio St. at 235. (Emphasis added).

In other words, the board of revision does possess the power to process a complaint for reduction of real property valuation until both R.C. 5715.19 and 5715.13 are satisfied. If the power to proceed with a complaint has not attached to a board of revision prior to the running of the statute of limitations, the board of revision is without jurisdiction to act upon the merits of the claim.

[2] R.C. 5715.13 provides:

> "The county board of revision shall not decrease any valuation complained of unless the party affected thereby or his agent makes and files with the board a written application therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made."

We explicitly hold that R.C. 5715.19 and 5715.13 are to be read *in pari materia* and that the statute of limitations of R.C. 5715.19 and 323.17 is applicable to R.C. 5715.13.

We do not believe that the summary dismissal of the taxpayers' complaints violated due process of law. As in *Stanjim* where the Mahoning County Board of Revision dismissed the complaints *sua sponte*, the Cuyahoga County Board of Revision acted lawfully when it disposed of the taxpayers' complaints on the jurisdictional issue.

The trial court held that the time within which the taxpayers were required to prepare their complaints and furnish the "pertinent information" was so short as to violate due process. We reject this argument. While the statute places a premium on prompt action by the taxpayer, there is ample time for the taxpayer to compile basic information about mortgages, insurance, purchase price, and the like. Such information is readily available to the taxpayer; its compilation is not burdensome. Due process is not violated since the taxpayer has adequate opportunity to prepare his complaint prior to the last day on which his tax must be paid (and the complaint for reduction must be filed).

The Board of Tax Appeals has promulgated new complaint forms for tax years subsequent to 1973. We find this fact irrelevant to the discussion of the issues involved in this appeal.

The trial court held at page 9 of its Memorandum of Opinion that, "The Record herein clearly establishes that appellants [the taxpayers below] were not afforded the equal protection of the law." The court based its holding

on Stipulations of Fact 15a, 15b, and 16. These Stipulations are as follows:

> "15. That the Journal of the Cuyahoga County Board of Revision reveals that on various dates subsequent to June 12, 1974 the Board of Revision entered certain decisions upon its Journal after reciting, in part, the following:
>
> " 'The Cuyahoga County Board of Revision met on this day . . . . The following Real Estate Complaints were considered by the Boards Appointees.'
>
> "That among the aforesaid decisions were:
>
> "(a) Decisions on their merits of approximately 250 Complaints seeking decreases in assessed value, not completely filled in when filed, upon which hearings had been held prior to June 12, 1974; and
>
> "(b) Decisions on their merits of approximately 100 Complaints seeking decreases in assessed value, in which the pertinent information portion of The Cuyahoga County Complaint form was not completely filled in when filed, upon which no hearing had been held prior to June 12, 1974.
>
> "16. That subsequent to June 12, 1974 and also subsequent to August 21, 1974, Boards of Revision in Ohio counties other than Cuyahoga heard and determined on their merits tax complaints wherein the pertinent information section was either entirely or partially not completed;"

The argument of the taxpayers comes down to the proposition that a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution is made out by the mere showing that a state statute arguably has been applied differently to similarly situated individuals. We cannot agree with this position.

The taxpayers' argument states that the Board of Revision dismissed 1400 complaints for failing to complete the "pertinent information" section of the complaint form while the Board of Revision heard on the merits 350 complaints which were also similarly incomplete.

At the outset, Stipulations 15a and 15b do not support the taxpayers. The Stipulations state that the complaints which were heard on the merits were "not completely filled in *when filed.*" (Emphasis added). The Stipulations say nothing about the status of the 350 complaints *at the time the statute of limitations had run.* We have insufficient evidence in the record to substantiate the claim that the 350 complaints were "identical" to the 1400 complaints which were dismissed.

Assuming *arguendo* that the 350 complaints were identical to the 1400 dismissed complaints, we do not find a violation of the Equal Protection Clause on the facts present in this record.

As indicated above, the Board of Revision relied upon the advice of the Cuyahoga County Prosecutor in 1971 when the Board questioned the validity of complaint forms which were filed with it without a complete "pertinent facts" section. Similarly, on June 24, 1974, "in light of the case of Stanjim Company vs. Board of Revision . . . and upon advice of the County Prosecutor . . .", the Board of Revision dismissed numerous pending complaints which had been incompletely filled out.

In a resolution dated July 8, 1974, the Board of Revision repealed its resolution of June 24, 1974. At that time, the Board adopted a procedure whereby it would review all pending complaints "on an individual basis with the County Prosecutor's Office," to determine whether each individual complaint satisfied the requirements of *Stanjim.* The July 8, 1974 resolution provides in part:

"Upon review of a letter dated July 3, 1974, signed by John T. Dowling, Assistant County Prosecutor, which incorporates several suggestions concerning the processing of Complaints as to the Assessment of Real Property, now, therefore, be it resolved this Board hereby repeals its resolution of June 24, 1974, and be it further resolved that the following procedures be and are hereby established:

"1.) Those complaints in which the information is completed and is in proper order shall be set down for review or hearings and be processed in the customary manner.

"2.) Those complaints which omit in its entirety the section entitled "pertinent information," or which contain language similar to the language referred to on Page 233 of the Stanjim Case vs. Board of Revision, 38 Ohio State, 2nd, be set aside and no further action be taken upon these complaints until the Supreme Court of Ohio rules on the application for a motion to rehear that case.

"3.) Those complaints which omit some of the pertinent information required, will be reviewed on an individual complaint basis with the County Prosecutor's Office, and then be determined as to whether it fits in the first or second category, and will be processed accordingly."

Upon review of the entire record and particularly the actions of the Board of Revision of June 24, 1974 and July 8, 1974, we cannot say that those actions constitute the "evil eye and an unequal hand" condemned in *Yick Wo v. Hopkins* (1886), 118 U.S. 356, 373-374. Rather, the record demonstrates that the Board of Revision acted at all times in good faith and without the intent to invidiously discriminate against the appellees-taxpayers.

A mere disparity in treatment under a state statute is not a violation of the Equal Protection Clause unless the disparity was "deliberately based upon an unjustifiable

standard such as race, religion, or other arbitrary classification . . . ." *Oyler v. Boles* (1962), 368 U.S. 448, 456. *Cf. State v. Wolery* (1976), 46 Ohio St. 2d 316, 325-326 (prosecutorial discretion) and *State v. Steurer* (1973), 37 App. 2d 51 (prosecutorial discretion).

It is apparent to this Court that *Stanjim* shocked many people into full awareness that R.C. 5715.19 and 5715.13 meant what they clearly stated—that a complaint seeking a reduction of real property valuation must show "the facts upon which it is claimed such decrease should be made." As we indicated above, in attempting to comply with the requirements of *Stanjim* and R.C. 5715.19 and 5715.13, the Cuyahoga County Board of Revision acted with good faith and honest effort even if arguably it acted erroneously with regard to the 350 complaints. In language applicable to the present appeal, the United States Supreme Court stated in *Snowden v. Hughes* (1943), 321 U.S. 1,8:

". . . and where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not *without more* a denial of the equal protection of the laws.

"The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination . . . . But a discriminatory purpose is not presumed . . . there must be a showing of 'clear and intentional discrimination.' "

It has also been held that "mere errors of judgment of officials will not support a claim of discrimination. There must be something which in effect amounts to an

intentional violation of the essential principle of practical uniformity. The good faith of such officers and the validity of their actions are presumed; when assailed the burden of proof is upon the complaining party." *Sunday Lake Iron Company v. Township of Wakefield* (1917), 247 U.S. 350, 352. *In Sunday Lake Iron* the Michigan state board of tax assesors acted in the face of a change in method of evaluating real property. In approving the action of the board, the court stated that the board's action "is not incompatible with an honest effort in new and difficult circumstances to adopt valuations not relatively unjust or unequal."

We have also relied on the following cases which have held that "mere mistake[s] or error[s] in judgment" or the misapplication of a state statute are not violations of the Equal Protection Clause. *Beck v. Washington* (1962), 369 U.S. 541, 554-555; *Charleston Federal Savings and Loan Ass'n v. Alderson* (1945), 324 U.S. 182, 190.

Appellees-taxpayers Chippewa Shopping Center, Inc. and Brecksville Shopping Center, Inc. have raised additional issues in their respective cases Nos. 35981 and 35982.

Both Chippewa and Brecksville filed complaints for reduction of real property valuation for the tax year 1973. Copies of their respective complaints appear in the record. It is clear that the "pertinent facts" section of each complaint is incomplete.

The arguments of Chippewa and Brecksville in this Court are premised on the existence of their respective complaints for reduction for the tax year 1971. These taxpayers argue that they were granted tax reductions for the tax year 1971 and that pursuant to R.C. 5715.19[3], they are

[3] R.C. 5715.19 provides in part:

"The determination of any complaint shall relate back

(Footnote continued on following page)

entitled to the reduced valuations for each year following 1971 without the necessity of filing a new complaint for reduction. The taxpayers argue that the filing of their 1973 complaints was "unnecessary" and should not prevent them from benefiting from the 1971 reduction.

The 1971 complaints of Chippewa and Brecksville were not made part of the appellate record. No Stipulation of Fact can be found which relates to the specific claims of Chippewa and Brecksville.

On the present state of the appellate record, we cannot say that Chippewa or Brecksville either filed complaints for reduction for the tax year 1971 or received tax reductions for the tax year 1971.

The present state of the appellate record is as follows. Chippewa filed complaints Nos. 27133 and 74586 for the respective tax years 1970 and 1972. Brecksville filed complaints Nos. 27134 and 74587 for the respective tax years 1970 and 1972. In Nos. 27133, 74586, 27134, and 74587, the Board of Revision decided the complaints on the merits. The taxpayers appealed the decisions of the Board of Revision to the Board of Tax Appeals. The Board of Tax Appeals dismissed the taxpayers' appeals because the taxpayers had failed to perfect their appeals pursuant to R.C. 5717.01.

Copies of complaints Nos. 27133, 74586, 27134, and 74587 were not made part of the present appellate record, but such complaints were the subject of an entry of the Board of Tax Appeals dated May 29, 1974.

(Continued from previous page)

to the date when the lien for taxes for the current year attached or the date as of which liability for such year was determined, and liability for taxes for such year and each succeeding year until the complaint is finally determined and for any penalty for nonpayment thereof within the time required by law shall be based upon the valuation or assessment as finally determined . . ."

We cannot say that the trial court was justified in reversing the dismissal by the Board of Revision of the taxpayers' 1973 complaint based on the claimed existence of the 1971 complaints.

We have before us only the 1973 complaints for reduction of Chippewa and Brecksville. As noted above, these complaints lacked the jurisdictionally required "pertinent facts". Case Nos. 35981 and 35982 are therefore in the same position as the other consolidated cases and the disposition of Nos. 35981 and 35982 is the same as all other cases heard in this appeal. Even if we assume *arguendo* that 1971 complaints were filed, and reductions granted, that has no relevance to this case, since this appeal is solely from the dismissal of the complaints for the 1973 tax year, and those complaints were properly dismissed as being incomplete. If appellees are entitled to a tax reduction for subsequent years because of the 1971 reduction, their remedy is not to be found in this court at this time, since that issue is independent of the issues raised on this appeal.

Appellees also allege in their brief that they filed extensive appraisals of the property involved with the Board of Revision, and that these appraisals contained all of the information requested on the complaint form, as well as additional information. We reject this argument.

The appraisal itself indicates that it was not completed until October 29, 1974, more than nine months after the last day for filing a complaint for a tax reduction. As we have already held, a taxpayer may not amend his complaint to meet jurisdictional requirements for reduction after the statute of limitations has run. The filing of the appraisal after the statutory time had expired was, in effect, an attempt to amend the complaint. We conclude that an appraisal filed after the time for filing a complaint has expired cannot serve as a substitute for the completion of the "pertinent facts" section of the complaint.

Lastly, appellees claim that *Stanjim*, by changing "a consistent line of procedural decisions," violated their due process rights to be heard and to defend their substantive rights. Appellees cite *Bouie v. Columbia* (1964), 378 U.S. 347 in support of their argument.

Appellees' argument is without merit. R.C. 5715.13, which clearly requires a party to "show the facts" upon which a reduction of real property valuation is predicated, has been in effect since 1953. Moreover, the Cuyahoga County Complaint Form, used by appellees, was in effect from 1966 through 1973. The complaint form contained language on its reverse side cautioning the taxpayers-appellees that failure to fully comply with R.C. 5715.13 prevented the Board of Revision from acquiring jurisdiction to hear the merits of their complaints.

Stanjim did not overrule or change "a consistent line of procedural decisions." Rather, *Stanjim* made plain that which a reading of R.C. 5715.13 and the Cuyahoga County Complaint Form would have revealed. *Stanjim*, by disapproving "dubious, albeit locally sanctioned [tax] practice[s]," did not violate the due process rights of appellees.

For the reasons stated above, we find that the order of the Court of Common Pleas reversing the dismissal of the taxpayers' complaints for reduction by the Board of Revision is in error. We sustain appellants' three arguments of error and reverse the decision of the Court of Common Pleas.

Rendering the decision which the Court of Common Pleas should have rendered, we affirm the dismissal of the taxpayers' complaints for reduction made by the Cuyahoga County Board of Revision.

APPENDIX L

JOURNAL ENTRY OF THE SUPREME COURT OF OHIO

(Dated December 15, 1977)

C.P. 936,942

THE SUPREME COURT OF OHIO
THE STATE OF OHIO,
CITY OF COLUMBUS.

ALUMINUM COMPANY OF AMERICA, et al.,
Appellants,

vs.

CUYAHOGA COUNTY BOARD OF REVISION, et al.,
Appellees.

This cause, here on appeal as of right from the Court of Appeals for Cuyahoga County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

Supreme Court, U. S.
FILED
APR 10 1978
MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

October Term, 1977

No. 77-1274

ALUMINUM COMPANY OF AMERICA and JONES & LAUGHLIN STEEL CORPORATION,
Petitioners,

vs.

CUYAHOGA COUNTY BOARD OF REVISION and CLEVELAND BOARD OF EDUCATION,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE OHIO SUPREME COURT

BRIEF OF RESPONDENTS IN OPPOSITION

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TABLE OF CONTENTS

Question Presented 1
Statement of the Case 2
Reasons for Denying the Writ 4
There Are No Special or Important Reasons for Review of This Case by This Court 6
Conclusion 7

TABLE OF AUTHORITIES

Cases

Dodge v. Osborn, 240 U.S. 118 (1916) 6
Griffith v. Board of Revision, 44 Ohio St. 2d 225 (1975) 3, 4
Mackay Telegraph & Cable Co. v. City of Little Rock, 250 U.S. 94 (1919) 5
Ownbey v. Morgan, 256 U.S. 94 (1921) 6
Oyler v. Boles, 368 U.S. 448 (1962) 5
Snowden v. Hughes, 321 U.S. 1 (1943) 5
Stanjim Co. v. Board of Revision, 38 Ohio St. 2d 233 (1974), *cert. den.*, 419 U.S. 1109 (1975) 2, 3, 4
Sunday Lake Iron Co. v. Township of Wakefield, 247 U.S. 350 (1918) 5
Yick Wo v. Hopkins, 118 U.S. 356 (1886) 5

Rule

United States Supreme Court Revised Rules, Rule 40 (3) 1

Supreme Court of the United States

October Term, 1977
No. 77-1274

ALUMINUM COMPANY OF AMERICA and JONES & LAUGHLIN STEEL CORPORATION,
Petitioners,

vs.

CUYAHOGA COUNTY BOARD OF REVISION and CLEVELAND BOARD OF EDUCATION,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE OHIO SUPREME COURT

BRIEF OF RESPONDENTS IN OPPOSITION

In accordance with Rule 40(3) of the United States Supreme Court Revised Rules, no repetition of the opinions below, jurisdictional basis, or statutes involved in the Petition is made in this Brief in Opposition. Respondent adopts Petitioner's statement of these items without approving the characterization made in Petitioner's listing.

QUESTION PRESENTED

Whether the requirement that a taxpayer answer, under oath and at the time of filing, all questions set forth on the Ohio real estate tax complaint form, is a reasonable administrative prerequisite to the right to an adjudication.

STATEMENT OF THE CASE

This case involves the failure by the Petitioners ("taxpayers") timely to answer the questions set forth on the Ohio real estate tax complaint form. The consequence of this failure was the dismissal of the taxpayers' tax complaints by the Board of Revision.

The tax complaint form in this case was prescribed by the Ohio Board of Tax Appeals ("BTA") and contained a section headed "The Following Pertinent Information Should be Submitted in Support of this Application." In the instruction section of the form, taxpayers are specifically cautioned:

> "Section 5715.13 of the Revised Code provides that THE BOARD SHALL NOT MAKE ANY REDUCTION UNLESS THE FACTS JUSTIFYING THE REDUCTION ARE SET FORTH AND SWORN TO. If complainant does not comply with those sections, the Board is without jurisdiction to consider the complaint." [Emphasis in original.]

Additionally, each year prior to the commencement of the tax complaint filing period, the County Auditor has published, in both newspapers of general circulation in Cuyahoga County, a Notice stating, *inter alia*:

> "It is necessary to furnish the Board FULL information by answering the questions set forth in the complaint form." [Emphasis in original.]

While the taxpayers' complaints were pending in the Board of Revision, the Ohio Supreme Court decided the case of *Stanjim Co. v. Board of Revision*, 38 Ohio St. 2d 233 (1974), *cert. den.*, 419 U.S. 1109 (1975). In *Stanjim*,

the Ohio Supreme Court found the questions set forth on the complaint form to be

> "wholly reasonable, non-oppressive, and clearly designed to elicit the information required by R. C. 5715.19 and 5715.13." *Stanjim*, 38 Ohio St. 2d at p. 236.

The court ruled that to vest the Board of Revision with jurisdiction to hear the tax complaint, the complainant must answer all of the questions set forth on the complaint form when it is filed.

Relying upon *Stanjim*, the Board of Revision notified the petitioning taxpayers that they had failed to provide all of the required information on the complaint form and that accordingly their complaints were dismissed. The taxpayers appealed the dismissal of their complaints to the Cuyahoga County Common Pleas Court which distinguished the *Stanjim* decision and remanded the complaints for hearing.

Shortly after the Common Pleas Court decisions, the Ohio Supreme Court decided *Griffith v. Board of Revision*, 44 Ohio St. 2d 225 (1975), and held that the slight differences between the *Stanjim* facts, which arose in Mahoning County, and the *Griffith* facts, which arose in Cuyahoga County, were of no legal consequence. The court, therefore, in *Griffith* found the reasoning of *Stanjim* fully applicable to tax complaints filed in Cuyahoga County.

The Board of Revision and Board of Education appealed the Common Pleas decision to the Ohio Eighth District Court of Appeals, which reversed the decisions of the lower court finding that *Stanjim* and *Griffith* controlled. The Ohio Supreme Court dismissed the taxpayers' appeals on the ground that no substantial constitutional question was raised.

REASONS FOR DENYING THE WRIT

In attempting to persuade this Court to accept these cases for review, the taxpayers have made the identical arguments made to the Ohio Supreme Court in their unsuccessful attempt to convince that Court to exercise its discretionary judgment. The taxpayers' constitutional arguments, in brief, are that they were not given "fair warning" that the questions on the complaint form had to be answered and that some taxpayers obtained tax reductions based upon incomplete tax complaints while the petitioning taxpayers' tax complaints were dismissed.

The first of these issues has been before the Ohio Supreme Court on two previous occasions and has been briefed in this Court on at least one occasion. In the cases of *Stanjim Co. v. Board of Revision, supra,* and *Griffith v. Board of Revision, supra,* the Ohio Supreme Court determined that the requirement that complainants have fair warning that they should answer the questions on the form was, without a doubt, met by the "cautionary statements" appearing on the form itself. The taxpayers' reliance on the assistant county prosecutor's letter to excuse their compliance with the instructions on the tax complaint form is unreasonable in light of the following equivocal language used in that letter:

> "An examination of the statutes and the rules of the Board of Tax Appeals, shows that the issue whether each and every and all of the questions set forth on the complaint form must be answered mandatorily, *has not been clearly defined.*" (Emphasis added)

There is certainly no such equivocation in the *published* Notice which informs all taxpayers that they must provide

"FULL information by answering the questions set forth in the complaint form."

The taxpayers' argument that they have been deprived of the equal protection of the laws must likewise fail when the facts and applicable decisions of this Court are considered. The crux of the taxpayers' claim is that there was inconsistent application of the requirement that all questions on the complaint forms must be answered. As the Ohio Court of Appeals noted, however,

> "the record demonstrates that the Board of Revision acted at all times in good faith and without the intent to invidiously discriminate against the appellees-taxpayers" (A 48).

Thus, the taxpayers' reliance on the case of *Yick Wo v. Hopkins,* 118 U.S. 356 (1886) is misplaced, for *Yick Wo* dealt with the administration of a law with the intention to discriminate against persons of Chinese ancestry. Many United States Supreme Court cases make it clear that:

> "erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws." *Snowden v. Hughes,* 321 U.S. 1, 8 (1943).

See Oyler v. Boles, 368 U.S. 448, 456 (1962); *Mackay Telegraph & Cable Co. v. City of Little Rock,* 250 U.S. 94 (1919); *Sunday Lake Iron Co. v. Township of Wakefield,* 247 U.S. 350 (1918) (burden of proof is on party challenging good faith of public officials). The law cannot be that having made a mistake in the performance of its duty a statutory board must thereafter continue to make the same mistake.

THERE ARE NO SPECIAL OR IMPORTANT REASONS FOR REVIEW OF THIS CASE BY THIS COURT

This case involves the application of the well-settled principle that compliance with reasonable administrative conditions may be required. (*Ownbey v. Morgan,* 256 U.S. 94 (1921); *Dodge v. Osborn,* 240 U.S. 118, 122 (1916)).

This case does not involve any federal question of substance which has not previously been decided by this Court, nor was the decision below in any way not in accord with applicable decisions of this Court. In addition, the taxpayers have presented no special or important reasons for review by this Court and none exist. In fact, the complaint forms at issue herein are no longer even in use in Ohio.

Certainly it is not important for this Court to review the factual bases for the conclusions of the Courts below that "fair warning" was accorded or that the Board of Revision acted in good faith.

CONCLUSION

In conclusion, Respondents respectfully submit that the Writ of Certiorari prayed for in this action should be denied.

Respectfully submitted,

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